

### **REMARKS/ARGUMENTS**

Claims 1-53 are pending in this application.

Claims 1-6 and 9-52 had been rejected under 35 U.S.C. § 103(a) over Nakamura (US Patent No. 6,236,904) in view of Matsunaga (US Patent Application Publication No. 2003/0053893).

Claims 7-8 had been rejected under 35 U.S.C. § 103(a) over Nakamura in view of Matsunaga and further in view of Tanigawa (U.S. Patent Application Publication No. 2001/0022930).

Claim 53 had been rejected under 35 U.S.C. § 103(a) over Nakamura in view of Matsunaga and further in view of Hassan (US Patent No. 3,968,885).

These rejections are respectfully traversed for the following reasons.

To support a 35 U.S.C. § 103(a) rejection, a patent or publication must be in the prior art under 35 U.S.C. § 102 (unless the patent or publication is admitted prior art)<sup>1</sup>.

The Patent Office has not cited a section of 35 USC 102 upon which it relied in making its section 103(a) rejection. In reviewing this rejection, Applicants assert that Matsunaga was improperly cited against the Application under 35 U.S.C. § 102.

In particular, Matsunaga cannot be cited against the Application under 35 U.S.C. § 102(b), because Matsunaga's publication date (March 20, 2003) is within the one-year grace period as calculated from the present Application's effective filing date in US (August 20, 2003).

Furthermore, Matsunaga cannot be cited against the Application under 35 U.S.C. § 102(e), because the U.S. effective filing date of Matsunaga (August 29, 2002) was later than the date of invention of the subject Application by the inventors. The subject matter of the invention of the present Application was invented at least no later than the filing

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<sup>1</sup> *Manual of Patent Examining Procedure* § 2141.01(I) (8th ed. rev. 7 July 2008).

date of the priority application in Britain, a WTO country (August 22, 2002). Since the subject matter of the present application was invented before the earliest effective filing date of Matsunaga in the US, and since under 35USC 102(c) Matsunaga's Japan priority date cannot be relied on in a 35 U.S.C. § 102(c) rejection<sup>2</sup>, the Matsunaga publication cannot be a 102(c) reference against the present application. That citation, therefore, should be withdrawn.

Since Matsunaga cannot be cited against the Application under 35 U.S.C. § 102, Matsunaga cannot be cited against the Application under 35 U.S.C. § 103(a), the 35 U.S.C. § 103(a) rejections should be withdrawn, and Claims 1-53 should be allowed.

It is believed that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited in this case. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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<sup>2</sup> *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966); see also *Manual of Patent Examining Procedure* § 2136.03 (8th ed. rev. 7 July 2008).